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November 17, 2023

Nwamaka Anowi, Clerk of the Court
United States Court of Appeals
for the Fourth Circuit
Lewis F. Powell Jr. Courthouse
1100 East Main Street, Suite 501
Richmond, VA 23219

Re: *Maryland Shall Issue, Inc., et al. v. Anne Arundel County, Md.*, No. 23-1351 (4th Cir.).

Dear Ms Anowi:

The Ninth Circuit's decision in *Nat'l Ass'n of Wheat Growers v. Bonta*, — F.4th —, 2023 WL 7314307 (9th Cir. Nov. 7, 2023), supports Anne Arundel County rather than Plaintiffs. The case involves a California law requiring a disclosure that an herbicide is probably carcinogenic to humans. In evaluating a First Amendment challenge to the law, the panel confirmed that "compelled commercial speech that is 'purely factual and uncontroversial'" is subject to the standard set forth in *Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626 (1985), which is "akin to a rational basis test." Op. *2. The panel noted that *Zauderer* extends "beyond prevention of deceptive speech to other substantial governmental interests, most notably, public health." *Id.* *10. And the panel confirmed that *Zauderer*, as applied in *NIFLA*, does not mean "that any purely factual statement that can be tied in some way to a controversial issue is, for that reason alone, controversial." *Id.* *10 (quotation marks omitted).

The panel concluded that the disclosure at issue was not purely factual and uncontroversial because, though one international public-health agency concluded the herbicide is probably carcinogenic, the agency "stands essentially alone" in that determination, "while EPA, OEHHA, and regulators from around the world conclude that it is not." *Id.* *12. The disclosure "improperly elevate[d] one side of a legitimately unresolved scientific debate." *Id.* *13.

The opposite is true in this case, where an overwhelming public-health consensus confirms that access to firearms is a risk factor for suicide, where there is no unresolved scientific debate, and where Plaintiffs' expert stands alone in disputing the accuracy of a pamphlet that was coauthored by the gun industry's principal trade organization.

Respectfully submitted,

s/ Neal Kumar Katyal
Neal Kumar Katyal
William E. Havemann

cc: All counsel via CM/ECF